

was awarded as follows:-

(i)	Actual medical expenses	Rs.76,513/-
(ii)	The loss of income	Rs.16,698/-
(iii)	Conveyance and special diet	Rs.10,000/-
(iv)	Pain and sufferings	Rs.20,000/-
(v)	Loss of amenities of life	Rs.10,000/-
	Total Compensation	Rs.1,33,211/-

4. The appellant was asked to pay the amount to the extent of 75% of compensation amount as per findings above i.e. a total of Rs.99,750.

5. Learned counsel appearing for the appellant has impugned the Award on two grounds. He firstly submits that there was enough proof to show that the respondent No.1 was also guilty of negligent driving. The said respondent No.1 being equally negligent the compensation should have at least been distributed in the ratio of 50: 50. It is secondly submitted that respondent No.2 as per evidence on record had a fake driving license and hence it is submitted that the appellant had no liability to pay the compensation amount.

6. As far as the issue of joint liability as raised by the appellant is concerned, the Tribunal noted that respondent No.2 had been chargesheeted by the police. As per site plan, Respondent No.1/claimant was taking a right turn to cross the divider. There was no red light. Respondent No.1 had crossed 3/4th of the road when respondent No.2 came on his motorcycle and hit the scooter of respondent No.1. There was no other traffic. As respondent No.1 had crossed 3/4th of the road leaving 1/4th of the road to be crossed the Tribunal concluded that though

it can be said that the claimant did not take full care and safety but his contribution would be 1/4th. This was so as the respondent No.1 having crossed the road 3/4th respondent No.2 in his motorcycle would have been able to get a clear view of the scooter of respondent No.1 and could have taken appropriate steps to stop the vehicle. Given these facts and keeping into account the chargesheet filed by the respondent No.2 and the site plan placed on record, in my opinion, there are no reasons to differ with the view taken by the Tribunal.

7. As far as the second submission is concerned learned counsel appearing for respondent No.2 and 3 has submitted that respondent No.3 is the owner of motorcycle. She is the sister of respondent No.2. In these circumstances, respondent No.3 had permitted respondent No.2 to use the motorcycle. It is submitted that no evidence has been led by the appellant to show that respondent No.3 deliberately permitted respondent No.2 to drive the vehicle knowing that the license was forged. Hence, no liability can be thrust upon respondent No.3.

8. A perusal of the Award shows that the Tribunal accepted the contentions of respondents No.2 and 3, namely, that respondent No.3 did not have reasons to believe that the driving license was not valid. Hence, liability was thrust upon the insurance company.

9. The appellant before the Tribunal led the evidence of R3W2 the Clerk from SDM-cum-Licensing Authority, Ballabgarh who has said that the license produced of respondent No.2 is forged and fabricated.

10. Respondent No.2 in his cross-examination has said that the driving license was seized by the police in a criminal case. He states that the driving license was got prepared by an agent. He denies that the driving

license was fake or his sister respondent No.3 was aware of this fact.

11. The evidence shows that there is no attempt by the appellant to show that respondent No.3 was aware that respondent No.2 had a fake driving license. In fact the chargesheet filed by the police also does not show any chargesheet having been filed under section 181 of the M.V.Act. From a perusal of the copy of driving license of respondent No.2 Ex.R3W2/1 it is apparent that on a visual inspection the license looks original and cannot be termed to be fake as is alleged.

12. Reference may be had to the judgment of the Supreme Court in '*United Insurance Co. Ltd. vs. Lehu* 2003 ACJ 611' wherein in para 20 this Court held as follows:-

“20. When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner should then take the test of the driver. If he find that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that Insurance Companies expect owners to make enquiries with RTO's, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii). The Insurance Company would not then be above of liability. If it ultimately turns out that the licence was fake the Insurance Company would continue to remain liable unless they prove that the owner/insured was aware or had notice that the licence was fake and still permitted that person to drive. More importantly even in such a case the Insurance Company would remain liable to the innocent third party, but it

may be able to recover from the insured. This is the law which has been laid down in Skiandia's Sohan Lal Passi's and Kamla's case We are in full agreement with the views expressed therein and see no reason to take a different view.”

13. In view of the fact that the appellant has failed to prove that respondent No.3 had knowledge about the invalid license of respondent No.2, I see no merit in the contention of the appellant. Appeal has no merits and is dismissed. The statutory amount, if any, be refunded to the appellant. All interim orders, if any, stands vacated.

(JAYANT NATH)
JUDGE

MAY 26, 2015/n